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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,450

02/25/2004

Michael Jack Zakharoff

ID-911 (80235)

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EXAMINER

KEEHN, RICHARD G

ART UNIT

PAPER NUMBER

2456

NOTIFICATION DATE

DELIVERY MODE

04/13/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/786,450	Applicant(s) ZAKHAROFF, MICHAEL JACK	
	Examiner Richard G. Keehn	Art Unit 2456	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-30 have been examined and are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/31/2009 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-2, 4-6, 8-11, 13-15, 17-18, 20-22, 24-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,282,565 B1 (Shaw et al.), and

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further in view of US 2004/0236966 A1 (D'Souza et al.) and US 2003/0115022 A1 (Hamilton et al.).

As to Claims 1, 10, 17 and 24, Shaw et al. disclose a communications system, delivery server, electronic mail communications method and computer-readable medium having computer-executable instructions for performing steps, hereafter referred to as the “system”, comprising:

at least one destination server for hosting a plurality of electronic mail (email) message boxes (Shaw et al. – Figure 1, Item 110 discloses the Incoming Email Server);

a plurality of communications devices for generating email messages each associated with a respective message box (Shaw et al. – Figure 1, items 171, 173, 175, 161, 162 and 16n disclose communications devices generating email messages with user mailboxes); and

a delivery server comprising a plurality of queues and a controller for (Shaw et al. – Figure 1, items 100, 140, 151, 153 and 155 disclose the Enterprise Email System, Email Queuing and Mailbox System comprising mail queues);

moving email messages stored in said first queue to a second queue based upon a delivery failure (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout failure), and

the email messages generated by said communications devices (Shaw et al. – Column 1, lines 36-39 disclose email messages being generated by users); and

with a successfully delivered email message (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on status of delivery timeout failure).

Shaw et al. disclose the email delivery server with queues, but do not explicitly disclose storing in a first queue, and attempting to send to said at least one destination server at a first sending rate; and attempting to send stored in said second queue to said at least one destination server at a second sending rate less than the first sending rate; and moving from said second queue to said first queue, but D'Souza et al. disclose

storing in a first queue, and attempting to send to said at least one destination server at a first sending rate (D'Souza et al. – Page 2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found. ¶ [0029] discloses that there can be multiple levels of queues with gradually slower send rates. Figure 3 discloses sending at multiple rates depending on which queue the packet is placed into),

attempting to send stored in said second queue to said at least one destination server at a second sending rate less than the first sending rate (D'Souza et al. – Page 2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found.), and

moving from said second queue to said first queue (D'Souza et al. - Page 2, ¶ [0030] discloses the common characteristic of status of whether the source address is known; D'Souza et al. – Page 2, ¶ [0028] disclose the decision engine storing packets in

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a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found. ¶ [0029] discloses that there can be multiple levels of queues with gradually slower send rates. Figure 3 discloses sending at multiple rates depending on which queue the packet is placed into).

Shaw et al. disclose the email delivery server with queues, but do not explicitly disclose moving email based upon receipt of a delivery failure message; and moving email having a common characteristic with a successfully delivered message, but Hamilton et al. disclose

moving based upon receipt of a delivery failure message (Hamilton et al. disclose determining whether a document is to be designated for a first or second delivery method based on receipt of email delivery success or receipt of email delivery failure – Claims 1 and 6); and

moving having a common characteristic with a successfully delivered message (Hamilton et al. disclose determining whether a document is to be designated for a first or second delivery method based on receipt of email delivery success or receipt of email delivery failure – Claims 1 and 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine sending data at fast, then gradually slower sending rates and moving data to be sent into queues based on send rate, both up in rate and down taught by D'Souza et al., with a delivery server comprising a plurality of queues and a controller for moving email messages stored in said first queue to a second queue based upon a delivery failure taught by Shaw et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to mitigate the effects of transmission flooding by those deemed to have adverse effect on communication throughput (D-Souza et al. - ¶ [0014]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine message delivery detection based upon receipt of a delivery failure message; and having a common characteristic with a successfully delivered message taught by Hamilton et al., with detecting success or failure of email delivery taught by the combination of Shaw et al. and D'Souza et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide reliable monitoring and delivery of electronic documents (Hamilton et al. – Page 1, ¶ [0005]).

As to Claims 2, 11, 18 and 25, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively, wherein the delivery failures are based upon a failure to deliver email messages to respective message boxes (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises a common message box (D'Souza et al. - Page 2, ¶ [0030] discloses the common characteristic of status of whether the source address is known).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 4, 13, 20 and 27, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively, wherein said controller stores directly in said second queue email messages generated by said communications devices sharing the common characteristic with an email message already stored in said second queue (D'Souza et al. – Page 2, ¶ [0028] discloses direct storage into the slower queue based on the common status of unknown source address; Shaw et al. discloses email messages as previously discussed).

The motivation and obviousness arguments the same as in Claim 1.

As to Claims 5, 14, 21 and 28, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively, wherein said second queue comprises a plurality thereof arranged in a hierarchy each having a respective storage interval associated therewith (D'Souza et al. – Page 2, ¶¶ [0028 – 0029] disclose multiple classes of queues being serviced from highest to lowest rate), the storage intervals successively increasing from a highest queue in the hierarchy to a lowest queue (D'Souza et al. – Page 2, ¶¶ [0028 – 0029] disclose multiple classes of queues being serviced from highest to lowest rate);

wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout); and

wherein said controller moves email messages stored in a higher queue in the hierarchy to a next lower queue in the hierarchy after being stored in said higher queue

for the storage interval thereof (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6, 15, 22 and 29, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 5, 14, 21 and 28 respectively, wherein said controller attempts to send messages from each of said queues in the hierarchy at successively decreasing sending rates from said highest queue to said lowest queue (D'Souza et al. – Page 2, ¶ [0029] discloses multiple classes of queues between fastest to slowest).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 8, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the communications system of Claim 1 wherein at least one of said plurality of communications devices comprises a wireless communications device (Shaw et al. – Column 1, lines 22-27 discloses internet which one of ordinary skill in the art at the time the invention was made would know to include wireless devices such as phones (line 17), pda's, laptops etc.).

As to Claim 9, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the communications system of Claim 1 further comprising a wide area network (WAN) connecting said at least one destination server and said delivery server

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(Shaw et al. – Column 1, lines 22-27 discloses internet which one of ordinary skill in the art at the time the invention was made would know to include wide area networks).

5. Claims 3, 12, 19 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Shaw et al., D'Souza et al. and Hamilton et al. as applied to claims 1, 10, 17 and 24 above respectively, and further in view of US 2003/0145106 A1 (Brown).

As to Claims 3, 12, 19 and 26, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively,

wherein the delivery failures are based upon a failure to deliver email messages to said destination servers (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises having respective message boxes hosted by a common destination server (D'Souza et al. – Page 2, ¶ [0028] discloses direct storage into the slower queue based on the common status of unknown source address).

The combination of Shaw et al., D'Souza et al. and Hamilton et al. does not explicitly disclose wherein said at least one destination server comprises a plurality of destination servers, but Brown discloses wherein said at least one destination server comprises a plurality of destination servers (Brown – Page 2, paragraph [0026] discloses the group of email servers).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said at least one destination server comprises a plurality of destination servers taught by Brown with at least one destination server for hosting a plurality of electronic mail (email) message boxes taught by the combination of Shaw et al., D'Souza et al. and Hamilton et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide an intermediary to improve network traffic flow (Brown – Page 1, paragraphs [0005-0007]).

6. Claims 7, 16, 23 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Shaw et al., D'Souza et al. and Hamilton et al. as applied to claims 5, 14, 21 and 28 above respectively, and further in view of US 5,632,011 (Landfield et al.).

As to Claims 7, 16, 23 and 30, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 5, 14, 21 and 28 respectively.

The combination of Shaw et al., D'Souza et al. and Hamilton et al. does not disclose wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof, but Landfield et al. discloses wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof (Landfield et al. –

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Column 2, lines 12-22 disclose the deletion of undeliverable messages from the queue. The fact that it is determined undeliverable is the same as the applicant's determination on non-deliverability based on failure to deliver at the lowest queue).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof taught by Landfield et al., with wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure taught by the combination of Shaw et al., D'Souza et al. and Hamilton et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to improve management of email by allowing undeliverable emails to be discarded (Landfield et al. – Column 1, lines 56-61).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These include:

US 2005/0063005 A1 Integrated document delivery method and
apparatus

US 6,675,215 B1 Automatic baud rate detection of null modem
unimodem client connection

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- US 2003/0061287 A1 Method and system for delivering files in digital file marketplace
- US 2002/0046250 A1 Certified and registered electronic mail system
- US 2005/0204002 A1 Dynamic online email catalog and trust relationship management system and method
- US 2005/0091318 A1 Enabling a sender to control future recipients of an email
- US 2005/0114453 A1 Pseudonymous email address manager
- US 2007/0203994 A1 COMMUNICATIONS SYSTEM PROVIDING MESSAGE AGGREGATION FEATURES AND RELATED METHODS
- US 2002/0133618 A1 Tunneling system for a cable data service
- US 2007/0005970 A1 E-mail authentication protocol or MAP
- US 2005/0055407 A1 Low earth orbit communication system
- US 2004/0215472 A1 System and method for the cross-platform transmission of messages
- US 2004/0011866 A1 Method and system for selling and delivering consumer products

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-

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5007. The examiner can normally be reached on Monday through Thursday, 9:00am - 8:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RGK

/Yasin M Barqadle/

Primary Examiner, Art Unit 2456